

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 BOBBY JOE MILLER,

12 Plaintiff,

13 v.

14 AMADOR COUNTY JAIL,

15 Defendant.
16

No. 2:21-CV-2132-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a pre-trial detainee proceeding pro se, brings this civil rights action
18 pursuant to 42 U.S.C. § 1983. Pending before the Court is Defendant's motion, ECF No. 29, to
19 dismiss this action for failure to comply with the Court's order to file a first amended complaint.

20 On March 31, 2023, the District Judge directed Plaintiff to file a first amended
21 complaint within 30 days. Plaintiff has been warned that failure to comply with the Court's
22 orders may result in dismissal of this action for lack of prosecution and failure to comply with
23 court rules and orders. See Local Rule 110. To date, Plaintiff has not complied.

24 The Court must weigh five factors before imposing the harsh sanction of dismissal.
25 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
26 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
27 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of
28 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;

1 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
2 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
3 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
4 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
5 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
6 1986). Dismissal has also been held to be an appropriate sanction for failure to comply with an
7 order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
8 1992).

9 Having considered these factors, and in light of Plaintiff's failure to file an
10 amended complaint as directed, the Court finds that dismissal of this action is appropriate.

11 Based on the foregoing, the undersigned recommends as follows:

- 12 1. Defendant's motion to dismiss, ECF No. 29, be granted.
- 13 2. This action be dismissed, without prejudice, for lack of prosecution and
14 failure to comply with court rules and orders.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court. Responses to objections shall be filed within 14 days after service of
19 objections. Failure to file objections within the specified time may waive the right to appeal. See
20 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 Dated: June 5, 2023


23 DENNIS M. COTA
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28